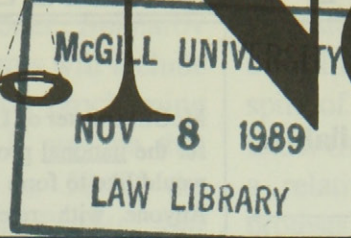
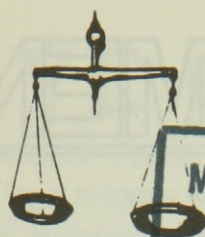


# Quid Novi



Vol. X, No. 10

McGILL UNIVERSITY FACULTY OF LAW  
UNIVERSITE MCGILL FACULTE DE DROIT

November 8, 1989  
le 8 novembre 1989

## Careers: Parenthood & the Practice of Law

by Geneviève Saumier, BCL III

On Wednesday, October 18th, the Placement Office, in conjunction with the Careers Committee presented a conference on **Parenthood and the Practice of Law**. Two speakers were invited to discuss this timely and apparently unresolved issue. The room was full to capacity. It was a pretty exciting event!

Me Sophie Bourque, partner and criminal lawyer at Hébert, Bourque, is the head of the Committee on Parenthood of the "Association du Jeune Barreau de Montréal" (AJBM). Me Christine Carron is a partner at Ogilvy Renault and

specializes in the litigation field.

The conference began with a short introduction by Prof. Jutras who gave us an overview of existing policies at Montreal firms on the issue of parental leave. The responses of the firms ranged from the ambiguous ("our policy is comparable to those of other firms") to the incredible ("not applicable" {even though the firm included five women lawyers}).

Me Bourque presented the results of a survey conducted in cooperation with the Conference Board of Canada to determine the views of young lawyers (i.e. those with 10 years or less of

practice) on the subject of parenthood and the practice of law. The findings revealed that 63% of the respondents were either married or cohabitated and that of these spouses or partners, 72% were also professionals. The survey also showed that these lawyers were ready to trade salary for time and were willing to work part-time in order to better balance their family and professional lives. The AJBM also met with 26 senior partners of large firms to discuss the issue. Following these undertakings, the Quebec Bar adopted a resolution setting minimum standards for parental leave: 17 weeks of maternity leave with no imposition of work (i.e. the standard

cont'd. p5

## *L'état et le terrorisme: une union trop souvent consommée*

par Eve Saucier, BCL II

Emmanuel Kant, en 1795, déplorait que les relations entre les États soient encore à un stade équivalent à celles de "l'Etat de nature", c'est-à-dire sans lois ni institutions pour les régir globalement et complètement. Eh bien, jeudi le 26 octobre, le professeur Luigi Condorelli est venu nous dire qu'en matière de terrorisme d'état, nous sommes sur la bonne voie mais qu'il reste encore du chemin à parcourir avant de parvenir à cet ordre international.

Invité par la Société de droit international

de McGill (qui, cette année, reprend vie sous la gouverne de quelques mordus de droit international), le professeur Condorelli, directeur du département de droit international et organisations internationales de l'Université de Genève, nous a exposé les trois facettes qu'a actuellement la responsabilité de l'état en matière de terrorisme international. Terrorisme qu'il faut bien distinguer de celui dû au fait de groupes indépendants, comme l'IRA ou le Sentier lumineux : il est plutôt question ici d'actes perpétrés par des États eux-mêmes.

suite p.6

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*...et c'est pas tout!*



# ANNOUNCEMENTS

## Tasses QPIRG Mugs Now available at SADIE'S!

**LSR - National Newsletter** - We are looking for people who would be interested in assisting in the production of the national LSR newsletter. We have a contract to put out four issues over the next 12 months. Initial responsibilities would involve production and subsequently expand to cover editing and solicitation of articles from LSR chapters across the country. If interested, leave a note in the LSR box in the LSA office or get a hold of Glenn McDonald at 271-0758.

**Invitation générale** - Venez rencontrer le nouveau groupe des *Civilistes* à un Vin et Fromage, mardi, le 7 novembre à 16h00 dans le Common Room. If you would like to know more about the *Civilians* and its planned workshops, come to our Wine and Cheese in the Common Room, Tuesday November 7th at 4:00 p.m.

**Yearbook Photos** - The Yearbook Committee kindly invites all clubs/committees to participate in this faculty's third annual Yearbook. We request that each club/committee wishing to be included in the annual submit the following no later than **November 15**:

1. A black and white photograph of your club/committee and
2. A list of the names of its members (please indicate which members appear in the photograph).

If you are unable to provide the Committee with your own photo or would rather have a Committee photographer take one for you, we would be happy to accommodate you. Please drop us a note to this effect by **November 5**, so that a convenient time may be arranged within the deadline. We encourage your group to be as creative as you wish in representing your group members. If you have any further questions or inquiries they can be directed to Bram Freedman and dropped in the Yearbook box in the LSA office.

**Careers** - Seminar on IN-HOUSE COUNSEL. Wed. Nov. 8th at noon in room 201 with Art Bruneau and Jim Doyle.

**LSR** - If you would like to have influence over up to 1000 lawyers nationwide, come to room 203 on Wednesday, November 15th at 12:00 pm. The

McGill chapter of LSR is assuming responsibility for the national production of the newsletter and would like to form an editorial/production board. Anyone with relevant newspaper production experience and/or initiative is invited to attend.

## EXAMINATION NUMBERS - All

Law examinations are written by an exam number. Students are requested to pick up an examination number at the Student Affairs Office starting this week, November 6th.

## Economic Regulation - Term II -

Please take note that this course will be evaluated by a paper and not by a take-home examination as originally stated in the Early Registration material.

## Torts I and Contracts I Exam

**Schedule Change** - The examination times for these two exams have been switched. Torts I will be held **April 23**, 9:30 a.m. (instead of May 1) and Contracts I will be held **May 1** at 2:30p.m. (instead of April 23).

**International Premiere** - Award Winning Comedy & Musical Extravaganza. This Thursday, November 9th, the video of last year's Skit Night will be shown during the Coffee House. Drop by and see another side of Law School.

Le jeudi 9 novembre, le vidéo de "Skit Night" de l'année dernière sera présenté au cours du Coffee House. Bienvenue à tous et toutes!

**LSR** - presents **Nuclear Militarization of Canadian Harbours** on Wednesday, November 8 at noon in room 203. The speaker will be Prof. Wade McClaughlin. Lunch will be served!

**FORUM NATIONAL** - Nous sommes heureux de vous annoncer que notre prochaine conférence portera sur le sujet de l'avortement. Professor Katherine Young of the Center for Medicine, Ethics and the Religious Studies Department of McGill and Me Henri Kelada will our feature speakers. This event will take place on Wednesday, November 15 in the Moot Court at 12:00 p.m.

## Hedonism

**Special 125 page supplement to the Quid end-of-term issue on the delights of life needs your contribution. Deadline: November 22. Don't be shy now!**

# ERRATUM

: In going to a 12-page format for the Hallowe'en issue last week, two articles were inadvertently cut short. The editors apologize to our readers and the authors. The missing texts are:

May Chin and Adelle Blackett, The Nexus of Gender and Race. "Indeed, feminist activism must struggle to meet the needs and aims of women of all ethnic origins; accessibility to the study of law to reach the destination of a racist-free and sexist-free society is - as Ms Thornhill demonstrated - a resource to be cherished."

Julie Godin, The Montreal New Music Festival - A Field Guide to the Bands: "The Montreal New Music Festival runs from November 2 to 12, with shows scheduled concurrently at Club Soda and Foufounes Electriques. Tickets for Club Soda are \$6.50 each, and each concert features three bands. The Foufounes shows are more expensive (ranging from \$6.50 to \$9.98) and feature mostly bands from out of town. One particularly intriguing lineup is for the heavy metal night of Nov 7, with **Sepultra**, **Oblivion** and **Devastation** sharing the stage (could it be a preview of the exam period?). Also worth noting are Foufounes shows by **Satan's Landlord** (Nov 2) and the **Jazz Butcher** (Nov 11). Tickets can be bought at Sadie's, Dutchy's or Ticketron. The Festival is your chance to experience the Montreal music "scene" and see some decent bands (and some surprises!) at a cheap price. So dig up some black clothes, and leave your preconceptions at home as you set out to rub elbows with the who's who of local musicians and cult figures."



# KEEPING AN EYE ON MOSCOW

By Brian Shiller, LLB IV

## Professor Cotler Assesses Soviet Legal "Revolution"

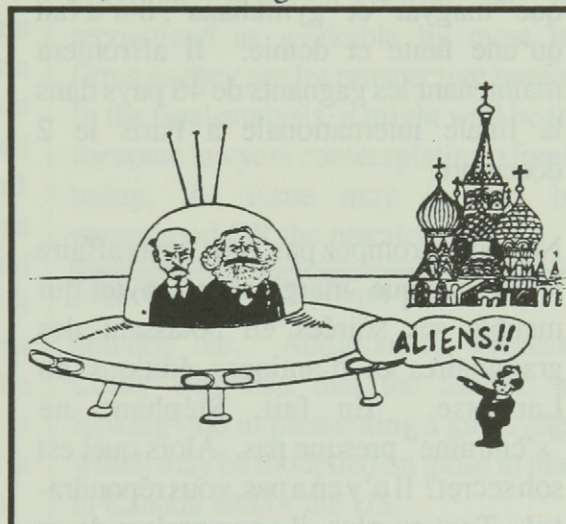
McGill Faculty of Law Professor Irwin Cotler met recently with Soviet authorities, including Alexander Sukharov, Procurator-General of the USSR. Sukharov explained that the radical change in the Soviet system constitutes a veritable revolution and that the law is "the engine of that revolution ... of *Perestroika* ... of *Glasnost*." In the past, before the era of reform, everything was prohibited, except that which was permitted by law. Today, everything is now permitted, except that which is expressly prohibited by law.

Such a transformation, or "revolution", has taken the form of a move from socialist legality to the infusion of the Rule of Law as the organizing principle of state and society. Mikhail Gorbachev calls this change a move from a command system to a system of rights. Professor Cotler is quick to point out that for the first time in Soviet history, law-makers are speaking of a "Rule of Law state" guaranteeing the rights of individuals the effect of which is to "turn Soviet ideology on its head." In the past, socialist legality, the notion that the needs and goals of the State have supremacy over law, guided the USSR through decades of stagnation and repression. With the Rule of Law as the organizing principle of state and society", Gorbachev has said, "the state must now become subordinate to the law."

A fundamental problem confronting the principle of the supremacy of law in the USSR, is that the Soviet Constitution does not provide for judicial review. Accordingly, the legality of legislative acts is never tested. While discussing this

point with Professor Cotler, Sukharov stated that the legal reforms will include the drafting of legislation proclaiming the supremacy of law. It may be that legislation similar to s. 52 of the *Canadian Charter of Rights and Freedoms* will be drafted. Additionally, the reforms include a statute which will serve to protect the independence of the judiciary - to actually make it a criminal offence to influence a judge, so that the courts will be afforded the opportunity to declare legislation invalid/unconstitutional.

As a corollary to implementing the Rule of Law as the organizing principle, Soviet authorities told Professor Cotler that not only do citizens have duties to the State, but the government has a



responsibility to its citizens to ensure the primacy of individual rights. Accordingly, said Soviet Minister of Justice Boris Kravtsov, the USSR has a duty to strengthen the rights and freedoms of every citizen - rights and freedoms that are proclaimed by law. Included in these rights and freedoms are social rights to education, employment, rest, social security and health care. Additionally, constitutional freedoms such as freedom of conscience and religion, of speech, press and assembly and the freedom to demonstrate, hold rallies, street processions and demonstrations must be ensured.

Last week, Soviet police attacked

protesters in Moscow who were holding a vigil for victims of Stalin's purges. In spite of this, Professor Cotler says that under *Glasnost*, citizens have been given a relatively free hand to engage in protests and to demonstrate. He believes, however, that the Soviets will introduce a more regulating policy to control large demonstrations.

At the present time, Professor Cotler points out, unprecedented initiatives are taking place with respect to the reform of criminal laws and procedures. These reforms include amending or repealing legislation which has served to criminalize dissent. There are also reform initiatives under way with respect to freedom of press laws to protect *Glasnost* in the media. Additionally a fundamental principle of criminal law reform states that Soviet criminal laws will be interpreted in light of international human rights treaties.

In interviews with scholars at the Soviet institute of State and Law, a leading "think-tank" in the USSR, Professor Cotler was told that the legal process must be validated as a rights process. To that end, said Soviet scholar Vladimir Kartashkin, it is necessary that protection of the presumption of innocence be secured, along with the elimination of prosecutorial bias. Sukharov also told Professor Cotler that reform of the Procuracy is taking place. Presently, each Republic has a procuracy charged with prosecuting individuals and a federal procuracy exists to oversee the process as a whole. Sukharov explained that reform of the Procuracy will entail the elimination of prosecutorial bias and changes respecting the defendants' right to counsel will take place. At the moment, one is only guaranteed the right to counsel at the end of the preliminary investigation. The reforms will include the right to counsel from the time of detention in addition to strengthening the

cont'd. p5



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# Le crack de la dictée

par André Beaulieu, BCL II

Qui l'eût cru? Le Stéphane Richer de l'orthographe française s'appelle... Stéphane Ethier et étudie à la faculté de droit de McGill. Diantre! Son casier est peut-être à côté du vôtre! Si vous avez lu les journaux, si vous avez écouté la radio, son exploit n'a pu vous échapper. Troisième l'an passé, Stéphane est maintenant le champion Québécois Junior (le jeunot!) de la dictée annuelle donnée par Bernard Pivot, depuis la France jusque dans les studios de Radio-Québec. En écrivant ce texte surréaliste ponctué des colles grammaticales les plus difficiles et de mots aussi exotiques que "magyar" et "gymkhana", il n'a fait qu'une faute et demie. Il affrontera maintenant les gagnants de 46 pays dans la finale internationale à Paris le 2 décembre.

Ne vous y trompez pas, on n'a pas affaire ici à quelque marginal presbyte qui meuble ses soirées en potassant des grammaires et d'antiques éditions du Larousse. En fait, Stéphane ne "s'entraîne" presque pas. Alors quel est son secret? Il n'y en a pas, vous répondra-t-il. Tout au plus, il vous parlera de sa bonne mémoire visuelle (pas "photographique; pas plus que vous,

Stéphane ne peut citer le Juge Dickson dans le texte à la page 380 du Renvoi Anti-inflation) et de son intérêt pour l'étymologie. Va-t-il changer ses habitudes en prévision de la finale internationale et s'entraîner un peu plus - à lever Chevrete et Marx par exemple...? "Ca dépend de la "collaboration" de mes professeurs" répond-t-il avec un sourire en coin.

Sa grande motivation, il dit l'avoir depuis qu'il fréquente une institution anglophone. C'est là qu'il s'est rendu compte qu'il fallait faire des efforts pour parler et écrire un français impeccable. Stéphane trouve que la qualité du français de ses confrères et consocurs de la faculté est très bonne, même excellente. Il est généralement surpris par le français de ceux dont c'est la langue seconde. En tous cas, il préfère une faute française, même s'il se défend de pratiquer le racisme orthographique, aux anglicismes qui émaillent tant de nos travaux (votre humble serviteur y compris).

Au-delà des mots abracadabrants, du pluriel des noms composés et du participe passé des verbes pronominaux, quel est le mot qui lui a donné le plus de peine? Et bien oui, c'est son propre nom, il n'a jamais su s'il s'écrivait Ethier ou Éthier.

## Senate Update

by Robert Fabes, LLB II, Law Senator

At the Senate meeting on Wednesday, October 25, the Board of Governors' decision over-ruling Senate's motion to re-negotiate the casual policy was discussed. Many Senators were concerned that the Board had acted contrary to McGill University statutes and that the decision effectively eliminated any power that Senate possessed. Consequently, a motion was passed requesting a joint Senate/Board of Governors meeting to discuss the confusion concerning those bodies' respective roles, to be held before Senate meets again.

The seriousness of this issue is indicated by the fact that the last time such a joint meeting was held was in the early 1970's. The date of the meeting has yet to be set but anyone interested in this historic event can get in touch with me through LSA.



parenthood... cont'd. from p1  
legislative requirement); paternity leave of 2 weeks. The resolution also advocated the increased use of technology in view of allowing parents to work from their home. (Note that this resolution is in no way binding on law firms) At present, the AJBM is working on a project to provide accessible day care for working lawyers' children.

Me Carron then took over to discuss her personal experience as a parent practising law. Me Carron had her first, and so far only, child after 5 years of practice and prior to becoming a partner. She took approximately 3 months leave. There was no indication as to compensation or work done during this period. Me Carron insisted that her pregnancy did not cause any major problems with the firm either prior to her departure or subsequent to her return. Me Carron emphasized three key points involved in the decision to combine practice with parenthood: balance between family, personal and professional life, organization and understanding of the inevitable changes which result from the arrival of a child both on a personal level and with one's spouse or partner. These three areas must, according to Me Carron, be addressed and constantly reworked in order to maintain some normalcy in a lawyer-individual-spouse-parent's life.

Following these two presentations there were only a few minutes left for questions. These tended to be specific and, unfortunately in my opinion, did not shed much light on the real situation encountered when facing the decision of starting a family during the course of a legal career.

There seemed to be somewhat of a conflict between Prof. Jutras' report of firm policies (and the needs expression by Me Bourque's survey) and Me Carron's assertions that she encountered no major difficulties when dealing with parenthood and her practice of law.

Perhaps the only explanation lies in the specificity of her own circumstances and the fact that her firm responded adequately to her particular needs. The most that can be said, therefore, is that each person's experience is unique; unfortunately that does not direct us to either a better understanding of the present situation or a more adequate solution to the obvious lack of uniformity or even existence of parental policy in private law practice.

Although this conference did perform a valuable service by discussing the serious issue of parenthood and the practice of law, I must say I was somewhat disappointed. This is perhaps due to the diverging views of parenthood entertained by different people. It is perhaps also due to the realization that the "compromises" which might provide an adequate middle ground are not recognized as workable by most law firms as they are by prospective parents. In the final analysis, it might well be that for some lawyers contemplating a family today, the issue may in fact be: parenthood OR the practice of law.

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#### Moscow... cont'd. from p.3

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defence bar. Additionally, Professor Cotler was told that the Soviets are looking into implementing a jury system which may be modelled on those in place in Canada and/or the US.

The USSR has also agreed to ratify the Optional Protocol of the International Covenant on Civil and Political Rights which, in effect, signals the first time in Soviet history that citizens will have the opportunity to petition international fora with respect to Soviet violations of the Covenant. As a corollary to this, the USSR has agreed to recognize the jurisdiction of the World Court as pertains to the interpretation and application of all international treaties that the USSR has ratified. The Soviets now regard the Helsinki Final Act and its related instruments as constituting "binding juridical acts" requiring "strict and full compliance."

When asked what the future of *Perestroika* and *Glasnost* holds, Professor Cotler stated that Gorbachev faces two serious problems. The first is the state of the economy. While *Glasnost* flourishes, the economy continues to stagnate. Professor Cotler feels that while Gorbachev's position as leader will probably not be in jeopardy, his policy of *Perestroika* may be in trouble. As long as the economy continues to fail, opposition to the reforms may grow.

The second serious problem confronting Gorbachev is the nationality issue. As the Baltic Republics continue to insist on greater autonomy, Gorbachev is faced with a difficult task. He has assured the Republics of greater independence and autonomy and *Glasnost* has inspired even further drives for reform. Yet the Communist Party has condemned the campaigns for separation taking place in Lithuania, Latvia and Estonia claiming that the local Party officials in the Baltics are "playing up to nationalist sentiments" and "in some places, a real threat has arisen of a civil conflict and mass street clashes. The very viability of the Baltic nations could be called into question."

Professor Cotler explains that the fundamental difference between the USSR today and ten years ago lies with the fact that there has been a total change in the leadership of the various Ministries, departments, and Institutes. The leadership now supports both Gorbachev and his policies. Gorbachev has succeeded in removing from Party positions those persons who did not agree with his reform initiatives and replaced them with people who support his plans for reform and democratization. The end result is less bureaucratic stagnation.

Professor Cotler feels that the Soviet legal revolution means a diminution in the role of the Party and an increased importance in the role of the judiciary. Moreover, government officials will be held more accountable for their actions as the primacy of individual rights engages  
cont'd. p.6



### terrorisme... suite de la p.1

Comme on peut s'en douter, ce secteur d'activités (si j'ose m'exprimer ainsi) n'est couvert par aucun instrument international, vu la délicatesse du sujet. Néanmoins, le droit international dispose de certaines normes pour faire face à ce "fléau qui s'abat sur le monde d'aujourd'hui", et tenir responsables les États qui sont, ou bien sont les auteurs directs de l'acte, ou ont simplement toléré ou assisté la perpétuation de tels actes. Ces critères sont les théories de l'organe "*de jure*", de l'organe "*de facto*", et la doctrine dite "du catalyseur".

La première théorie est aussi simple que rarement appliquée puisque difficile à prouver : un organe étatique se conduisant ainsi entraîne la responsabilité de l'État, son maître, même si cet organe a agi en dehors des sphères déterminées de son activité, et même s'il a agi en violant le droit interne dudit État.

En pratique, puisqu'il est rare qu'un État mécréant s'en remette à ses fonctionnaires pour exécuter des actes terroristes, la seconde doctrine, celle de "l'organe *de facto*", est invoquée plus fréquemment. Cependant, ici aussi le succès de cet argument est loin d'être garanti : non seulement un groupe doit-il avoir agi dans l'intérêt de l'État, mais encore faut-il prouver que ce groupe a été chargé précisément et préalablement de la commission de l'acte reproché. Tant dans le cas, par exemple, de l'affaire des otages américains en Iran que dans l'affaire des contras nicaraguayens, cet argument a échoué : dans la première affaire, on n'a pu démontrer que les étudiants avaient été ainsi chargés, et une "ratification" ultérieure de l'acte par l'Iman Khomeiny (déclarant que la détention des otages était une bien bonne chose et qu'elle devait se poursuivre) ne peut constituer une telle preuve de mandat préalable; et concernant le Nicaragua, les États-Unis n'ont pu être tenus responsables sous cette doctrine car il ne put être établi qu'ils étaient à l'origine de la perpétration de chacun des

actes ponctuels en cause.

Mais que nos âmes effarées se rassurent : tant dans ces deux affaires qu'en général, ces États ne sont pas alors automatiquement et totalement absous. Il nous reste la troisième doctrine, dite du "catalyseur"; le fait que de tels actes ne soient pas imputables à l'état sous un chef de terrorisme mais que cet État ait néanmoins agi de façon répréhensible peut mettre en évidence d'autres chefs d'accusation qui, eux, entraîneront des sanctions. Pour reprendre les exemples précédents, l'Iran a été inculpé non pas d'avoir attaqué l'ambassade mais de ne pas avoir protégé le personnel diplomatique américain. Et les États-Unis, puisqu'ils avaient encouragé les rebelles nicaraguayens, ont été reconnus coupables d'avoir enfreint la Convention de Genève de 1949 sur les droits de l'homme.

Donc de tels États ne s'en tirent pas indemnes, mais le droit international a encore du mal à reconnaître leur responsabilité en matière de terrorisme. L'état de nature persiste... Cependant, nous dit le professeur Condorelli, il y a une chose à ne pas oublier (et qui nous consolera peut-être) : les relations juridiques ne se limitent pas au plan juridique; le plan politique est tout aussi -sinon plus- générateur de réprobation...Heureusement.

### Moscow... cont'd. from p5

the responsibility of the government to its citizens. "It is also important to notice", Professor Cotler points out, "that radical reform in the USSR has been initiated from above and supported from below as opposed to being initiated from below and crushed from above as what occurred in China." With the support of the people, the Soviet legal system can go a long way in a very short period of time. With the supremacy of law as the foundation and radical reform taking place every day, we are witnessing what Professor Cotler calls "a revolution in the law, a revolution of thinking/speaking about law - and law as a change agent in the Soviet Union as a whole."

### Forum National Provocative and Challenging

by James Hugues, BCL II

In a jam packed room 202, William Johnson of the Montreal Gazette gave lawyers a few things to think about last Wednesday at noon.

His talk centred around the language question in Quebec. Using several examples from film and politics, Johnson asserted that francophone Quebecers have been deceived about the strength of their culture, language and population. In very provocative fashion, he stated categorically that there is no threat to the French language and no threat to French Quebecers being displaced as the cultural majority in the province.

Saying that the forces of urbanization and education in the 60's should have markedly increased the percentage of bilingual Quebecers past the 1959 level of 31%, Mr Johnson went on to show the percentage hadn't changed by 1986. This fact, combined with demographic data that predicted an increase in the percentage of french-speaking Quebecers relative to other language groups (past the 85% level) made Johnson conclude that any insecurity in French Quebec is due to the unfounded myths of cultural disintegration propounded by the French "intelligensia".

William Johnson asked the audience to criticize and correct his conclusions. He challenged all in the room to seek the truth. He said that if Quebec wanted to separate from the rest of the country, that was fine with him but he insisted that the separation debate include an honest and rigorous exploration and analysis of the facts. Being a federalist, he implied that if the truth were to emerge, the case for Canada would be stronger.

Forum National's main function as an LSA club is the Speakers' Series. The next event will be a **New Perspectives on Abortion Symposium** on Wednesday Nov. 15 at noon in the Moot Court. Look for further details in the *Quid*'s Announcements section.



# Becker's Hollow Victory

by Michael B. Kleinman, BCL II

Recently, a hearty group of BCL II students received an assignment. Their task? To research and write a legal memorandum in Common Law Property. Specifically, the questions posed concerned the validity of conditions in a will (precedent, subsequent, redundant and irrelevant) and the doctrines of resulting and constructive trusts, particularly as they apply to non-married cohabitants. As fellow writers of legal memoranda in this faculty, I am sure you are familiar with the strange habit of citing one "leading" case in the problem, in order to send you down that ol' yellow brick road of seemingly interminable research.

In any case, pardon the pun, we were tipped off about the 1980 Supreme Court case of *Pettkus v. Becker* (1980), 117 D.L.R. (3d) 257 [Note the UNofficial reporter!]. After six years of litigation, the Supreme Court finally awarded Rosa Becker \$150,000 under a constructive trust, a remedy designed to redress the inequality of one "spouse's" (unjust) enrichment at the other's expense. Becker, and her common-law companion of almost twenty years, Lothar Pettkus, had set up and operated a bee-keeping farm which was worth close to \$300,000 by the time Pettkus threw her out of their Hawkesbury, Ontario home, gave her \$3,000 and told her to "get lost". Naturally, the property was in his name.

After finding favour in the eyes of the Supreme Court, Rosa Becker never received a single cent's worth of compensation. According to Gérald Langlois, Becker's lawyer for eleven years, Pettkus used, "every legal tree in the forest of the law to evade the award." This included transferring the assets into another person's name, allowing the

assets to depreciate and simply avoiding delivery of legal documents.

In fact, Pettkus married soon after kicking poor Rosa out of their home, and placed his property in his wife's name. Moreover, he refused to recognize the court's ruling because, "it was based on lies". It would seem that Pettkus never took a course in Foundations, and had no regard whatsoever for the rule of law or the legal order of this country; after all, it's only the Supreme Court we're talking about.

In 1985, Rosa Becker might have had reason for optimism when two properties involved in the litigation were sold for \$68,000. Alas, woe was Rosa Becker, since lawyer Langlois immediately seized the money in order to cover his legal fees! After news of Becker's suicide reached Langlois, he commented: "My feelings are that the case must have been a terrible cross for her to bear. I was terribly frustrated, so you can imagine how she felt."

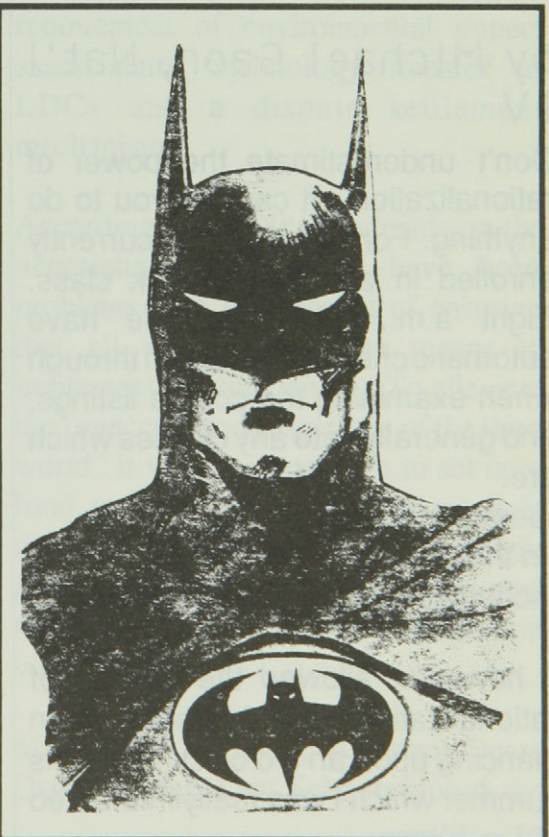
Our story ends in tragedy, unfortunately. Rosa Becker committed suicide by shooting herself through the forehead with a .22 calibre rifle on November 5, 1986. Virtually penniless, Becker left behind several letters written in her native German, saying her death was a protest against a legal system that denied her the fruits of her victory. There was something inherently wrong with a justice system which broke new ground by awarding her a constructive trust, but which failed to ensure that she received her due. In the words of Ottawa lawyer Lawrence Greenspon, retained by Becker only 2 months before her death, "the operation was a success, but the patient died."

Pity Pettkus' wife, Monique, who complained that her husband had been,

"unfairly painted as a monster". Lothar Pettkus' lawyer commented, "He couldn't pay out \$150,000; as far as I know, he doesn't have a cent."

While a group of us were recently caught up with the doctrines of resulting and constructive trusts, it might be instructive (if not healthy) to reflect on Rosa Becker's plight. The legal principles enshrined in legislation and applied in the case law may form the subject of heated debate and argument in lecture halls, scholarly journals and even in our beloved 'Pit'. The story of Rosa Becker sends out a strong warning that we in (or heading towards) the legal profession concern ourselves not only with the fine principles of the law (for these are important) but with the broader 'big' picture as well. For in the end, what good are good laws in a lousy system?

For more background (you mean this wasn't enough?) consult: *The Gazette*, 11 November 1986, p.1; *Maclean's*, 24 November 1986, p. 50; *Toronto Star*, 14 November 1986, pp. A12, A18.





# The Thornhill Lecture: Another View

by Allison Turner, BCL III

At noon on Wednesday, October 11, Esmeralda Thornhill spoke in the Moot Court on "Black Women: The Nexus of Race and Gender: A Lecture on Racism and Law". This lecture was put on by Women and the Law and Professor Colleen Sheppard who teaches, among other courses, Feminist Legal Theory.

Before Ms Thornhill began her talk, she apologized for having come prepared for an hour long speech instead of the allotted forty minutes. She would have to "skip over a few very important parts" in order to cover the predominant linking issues that carried the lecture.

Ms Thornhill is a very articulate and dynamic speaker, but unfortunately for many (it seemed) the result of her editing was a speeded up version of "The History of the Legal World According to Black Women". She introduced us to her

proposed definition of racism: racial prejudice plus institutional power equals racism. Personally, I feel that the two elements constitute societal manifestations of underlying racism and the first element alone is racism. However, (and call me an overestimator) I don't think the problem lies in the definition, but in people's failure to admit it of themselves. The same could apply to sexism and any other form of group oppression.

Ms Thornhill told us that black women are the nexus of racial and sex discrimination. When asked why, or what she meant by this, she said she didn't understand the question. I am still trying to understand both the question (is it obvious or not?) and the answer.

When this lecture was discussed in Feminist Legal Theory, it appeared that many students were disappointed because they expected more "feminist talk". Ms Thornhill, we must remember,

believes that it is impossible to separate racial and sexual discrimination. In other words, oppression is oppression. Her point is: one group of oppressed individuals ("women") has, in turn, treated some of its own members (black women) with another form of prejudice - that of not listening to the experiences of black women while creating and developing feminist theory.

The lecture was a particular disappointment to me. I was hoping for a discussion on the reason racism, or oppression exists in the first place, and possible remedies including the powerful influence of primary education. Perhaps, in the future, host groups such as Women and the Law could arrange for longer lecture periods when speakers of Esmeralda Thornhill's stature are invited to speak. If that couldn't be possible, the group could warn guest speakers of the limited time available so that they may be and feel better prepared to discuss their subject.

## The Power of Rationalization

by Michael Gaon, Nat'l IV

Don't underestimate the power of rationalization. It can get you to do anything. For instance, I am currently enrolled in an eight o'clock class. Eight a.m.. Most people have automatic checklists they run through when examining the course listings, and generally veto any classes which are:

- before 10 o'clock a.m.;
- in the a.m. on Mondays;
- scheduled for anytime on Fridays.

I, however, allowed the powers of rationalization to take hold when glancing upon an 8 o'clock class this summer which I was really interested

in. The conversation I had with myself went something like this:

- "Eight o'clock? - ooh, that's pretty early, isn't it?"

- "Well, it's only once a week, I guess I can cope. Yeah! Once a week, that's the ticket."

My 8 o'clock class (which is only given once a week) has led to radical changes in my grooming, my lifestyle, and the innermost essence of my being.

By the first class of the semester I realized that there was no way I was going to jam those small yet unforgiving plastic disks into the two slits found on either side of my nose. Nope. Definitely glasses today. The second class of the semester brought

about an acute awareness of how precious those twenty minutes of sleep are. You know, the twenty minutes of sleep which normally precede the time you must step out your door in the morning. This awareness resulted in the somewhat related conclusion that it doesn't really matter if I don't shower before this class. By the third class, I had forsaken all my righteous principles about the importance of not being dependent on chemicals to get through the day. The issue is no longer whether or not to drink coffee but rather how many cups I can balance one on top of the other.

My message is simple: be strong - your first reaction is almost always the right one.



# Greening of the Law

(Highlights of the 18th Annual CCIL Conference: Oct. 19-21, 1989, Ottawa)

by Juli Abouchar, LLB II

Sitting in the ornate ballroom of the Château Laurier, I could hardly believe what I was hearing; environmental concerns which, in North America over the past 10 years had generally been the domain of scientists and public interest groups were being grappled with by lawyers. The topic of the 18th Annual Canadian Council on International Law Conference was "Preserving the Global Environment".

Professor Richard Falk of the Center for International Studies at Princeton University began the conference with an encouraging speech outlining the unprecedented set of developments which can be seen as opportunities to wake up the "sleeping giant" of international law to respond to global environmental problems. The developments he cited were socio-political changes in recent history:

- the initiative by the USSR to strengthen the World Court, making the radical point that individuals can demand lawful foreign policy;
- the emergence of a widely dispersed societal consciousness on the environment;
- the emergence of green politics in Europe which has caused mainstream political parties to rethink their policies (witness the greening of Margaret Thatcher);
- increasing appreciation in the third world that environmental issues are global in scope, especially as it becomes a polluting zone for industrialized states;
- the ending of cold war preoccupations, releasing new political energies and expanding states' understanding of security to include environmental

- protection;
- the growth in society of NGOs and their legislative input;
- dramatic "environmental breakdowns" of recent years (i.e. Chernobyl and Bhopal);
- and finally, the approach of the year 2000 itself, creating a receptivity to "bolder thinking".

These developments, Professor Falk told an audience of some 300 lawyers and lawyers-to-be, give to international lawyers a potential role that they have never before enjoyed - one based on the need for successful cooperation rather than mistrust and competition. Awakening the giant depends on international lawyers having an active sense of professional responsibility, rather than one of primarily serving the client.

If Professor Falk's speech did not awake the giant, nothing would: however the next steps are not as easy. Much of the ensuing panel discussion illustrated the problems with setting up international conventions to address environmental concerns. The panel session following the introduction, entitled "Negotiating and Implementing International Conventions for the Protection of the Atmosphere" consisted of three speakers.

Dr Kirk Dawson, Director General of the Canadian Climate Center, who has been prominent in international meetings on how to deal with the atmosphere, told the audience of the basis of scientific concern on the climate issue. He confirmed that there is evidence of an increase in carbon dioxide (11% over the last 30 years), and explained how the carbon dioxide and other man made "greenhouse" gases act as an insulating blanket or heat trap around the globe, which could result in an estimated temperature rise of 3.5 degrees Celcius

over the next century. The recent changes are large and of unprecedented speed when compared to climate variations in the past history of the earth.

The problems for scientists are to figure out how the greenhouse effect will change as we change the composition of greenhouse gases, as well as the timing and regional variations. To some areas the changes may result in an improved climate, while to other areas, disaster - including both extremes of drowning and drought.

Following Dr Dawson, Mr Borg Olivier, Ambassador of Malta to the UN spoke of the elements to be included in the convention on climate change being prepared by the UN International Panel on Climate Change, to be adopted at the 1992 Conference on the Environment and Development to be held in Brazil. The format of the convention will be similar to the *Vienna Convention on the Ozone Layer*, providing for prevention and abatement of harmful emission activities, an increase in research, a framework for protocols, monitoring, the requirement of environmental impact assessments, technology transfer to LDCs and a dispute settlement mechanism.

According to Mr Olivier, already, in the negotiating stage, there have been problems with the concept of ensuring that all nations have the means to implement the convention. To alleviate the "concerns and suspicions of the third world" it will be imperative to set up a fund to "help developed nations help developing nations". The sources might include contributions from developed states, user fees, and fines for convention violations.

Ms Sharon Williams, Assistant Dean, Osgoode Hall Law School, closed the

cont'd. p.10



### Greening... cont'd. from p.9

panel discussion by addressing the further problems to be encountered in the convention ratification stage. She stressed the necessity with a convention of this scope, of "wholesale ratification" to make it successful. It is not just the signing of the treaty at the Brazil conference that will solve our environmental problems; achieving a consensus on the home front allowing for eventual ratification and implementation is need to make the treaty work. This requires a political and social will inside all the countries concerned.

Ms Williams posits four situations which could throw obstacles in the way of ratification: only the countries which import the environmental problems and

can see immediate benefits might sign; there may be issues of higher concern at home causing delay and time for the opposition to gather its forces; the government at home may change hands; finally, government departments themselves may oppose clauses which affect them. In conclusion, Ms Williams stressed the need for NGOs to continue the leavening process of raising the opinion domestically to bring pressure on their governments.

The CCIL conference committee is to be congratulated on choosing such a bold, though timely topic, presented in a way which, while encouraging, did not ignore the very real problems that will challenge international lawyers as they face environmental issues.

### Quotes of the Week:

**Where am I? Department:**  
**Professor Simmonds in Business Associations:**  
"Consider the corporation, if you will...naked and shivering on the existential shore."

...isn't that great? -the eds.

**Professeur Kasirer en Droit de la famille:** «Les mariages en général durent moins longtemps que les réfrigérateurs.»

## Coin des Sports Corner

Law teams are flying high in sports action this week

**Co-Rec Softball:** The Law Wrecks advance to the 2nd round of playoffs with a win on Hallowe'en weekend. Kudos to Lori for showing up at 8:00 a.m. still in costume from the previous night ... and to José Neatby -who broke a season-long 0 for 12 collar by beating out a grounder to 2nd. Said one observer witnessing Neatby's almost flawless performance both in the field and at the plate: "Although he couldn't hit, he also couldn't field." Keep up the hot streak, José!

**Men's Softball:** The Regal Legals finished their season at 3-1 after cruising through a double-header. D. Butts went 5 for 5 in the rout. The Legals look forward to the playoffs hoping not to freeze to death in Molson Stadium in mid-November. If they hope to advance they will need to tighten up on defence and eliminate the baserunning blunders that have plagued them all season.

**Ultimate:** The Amazons bowed to the Ultimates -Montreal's best touring team- in the first round of playoffs. After a surprising 4-1 regular-season record the Amazons lost a close 7-5 game thanks in large part to strong horizontal offence

-led by Bing- and defence inspired by Stacy's smothering a player answering to the name "Mama". Hats off to Charles for dynamic organizational skills and managing against all odds not to get banned for life from the league.

**Men's Ice Hockey:** The Law A team eagerly anticipates its game against rival Université de Montréal. Come and watch them Sunday November 12 at 4:45pm at McConnell Arena (McGill). Sources say the team regards this game as an important pre-Law Games test, hence they all plan to party very late before the game.

Randy M's B team will play a U of M team at the Outremont Municipal Arena at 12:30 pm on Friday, Nov. 10.

**Women's Hockey:** Law's female players won a decisive 4-0 game thanks in part by the stellar goaltending of A. Choksi. Chantal Arsenaault boosted the squad with two snapshot goals. The others were netted by Mundy and Tamara.

**Women's Soccer:** The lady kickers lost a tight 2-1 game in the playoffs to end a dynamic (and well-coached) futbol season. A. Hughes supplied the only goal for the Law team.

**Men's Soccer:** The male contingent also dropped out of playoff action in the first round with a loss on the 29th. The team has been plagued by injuries, including all-star M. Mollard who is nurturing a back injury.

**Basketball:** In a game reminiscent of the 1983 NCAA Championship final, the Whatever's -still without Captain Buzz- eked out a one point win. D. Butts led all scorers with 13 and played the box and one defence excellently, denying hot shooting #20 the ball and limiting him to two pathetic airballs and no points in the second half. Strong defence by the guards, and forceful inside moves by Moose converted a five-point first half deficit into the Whatever's third win of the season. Newcomer Jim Hughes added strength to the large squad.

**Law Games/Jeux 'Ridiques:** Deadline for payment has been extended two weeks to Nov. 15. Look for posted times for payment.

**Tournoi de Squash:** Veuillez vous inscrire aussitôt que possible. On essaie de le planifier pour le 11 novembre au club Rockland.

That's all! Thanks to R. Michelin for most of this stuff! B.Goode: Air Jordan